

1 Robert D. Infelise (California State Bar No. 93876)
2 Peter M. Morrisette (California State Bar No. 209190)
Cox, Castle & Nicholson LLP
555 California Street, 10th Floor
3 San Francisco, California 94104-1513
Telephone: (415) 392-4200
4 Facsimile: (415) 392-4250
Email: rinfelise@coxcastle.com

5 Attorneys for the plaintiffs,
6 DR Management, LLC; DR Acquisitions I, LLC; DR Holdings,
LLC; Jennifer Lin; Frederick Lin; and Kevin Lin

7 Joseph P. Russoniello (California State Bar 44332)
8 United States Attorney
Thomas Moore (ASBN 4305-T780)
9 Assistant United States Attorney, Chief, Tax Division
Cynthia Stier (District of Columbia Bar No. 423256)
10 Assistant United States Attorney
10th Floor Federal Building
11 450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
12 Telephone: (415) 436-7000; Facsimile: (415) 436-6748

13 Robert J. Higgins (District of Columbia Bar No. 242966)
Trial Attorney, U.S. Department of Justice
14 Bart D. Jeffress (Connecticut Bar No. 419184)
Trial Attorney, U.S. Department of Justice
15 555 4th Street., N.W., Room 8816
Washington, D.C. 20001
16 Telephone: (202) 307-6580; Facsimile: (202) 514-9440
Email: robert.j.higgins@usdoj.gov

17 Attorneys for the defendant
18 United States of America

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**
21 **SAN FRANCISCO DIVISION**

22 **DR MANAGEMENT, LLC, et al.,**

23 **Case No. 05-01010 MMC**

24 Plaintiffs,

25 vs.
26 **FIFTH STIPULATION TO CONTINUE
TRIAL DATE AND SUMMARY
JUDGMENT MOTION HEARING DATE;
PROPOSED ORDER**

27 **UNITED STATES OF AMERICA, et al.,**

28 Defendants.

1 This stipulation between the plaintiffs (DR Management, LLC; DR Acquisitions, LLC;
 2 DR Holdings, LLC; Jennifer Lin; Frederick Lin; and Kevin Lin) and the defendant (the United States
 3 of America) is based on the following facts:

4 **RECITALS**

5 1. On February 7, 2008, the plaintiffs and the defendant filed a stipulation
 6 (Document 145) (i) notifying this Court that the parties had reached a tentative settlement and (ii)
 7 requesting that this Court continue the trial date and summary judgment hearing no less than four
 8 months so as to provide the defendant with sufficient time to secure the necessary approvals from the
 9 Department of Justice and the Internal Revenue Service and prepare the settlement papers.

10 2. On February 8, 2008, this Court issued an order (Document 146) approving in
 11 part the stipulation to continue the trial date and summary judgment hearing date, and set the
 12 following revised calendar in this action:

- 13 • Summary Judgment Motion Hearing: June 20, 2008
- 14 • Pretrial Filings, including Motions in Limine: July 1, 2008
- 15 • Opposition to Motions in Limine: July 8, 2008
- 16 • Pretrial Conference: July 15, 2008
- 17 • Trial Date: August 25, 2008

18 3. On February 20, 2008, the plaintiffs and the defendant filed a stipulation
 19 (Document 147) notifying this Court of a conflict that the plaintiffs' lead lawyer, Robert D. Infelise,
 20 had with the schedule adopted by this Court. On February 21, 2008, this Court issued an Order
 21 (Document 148) approving the stipulation and set the following revised calendar in this action:

- 22 • Summary Judgment Motion Hearing: July 18, 2008
- 23 • Pretrial Filings, including Motions in Limine: August 5, 2008
- 24 • Opposition to Motions in Limine: August 12, 2008
- 25 • Pretrial Conference: August 19, 2008
- 26 • Trial Date: September 29, 2008

1 4. On July 2, 2008, the plaintiffs and the defendant filed a stipulation (Document
 2 149) notifying this Court that the parties needed more time to finalize the settlement and requested an
 3 approximately one month extension in the dates adopted by the Court pursuant to its February 21,
 4 2008 Order (Document 148). On July 3, 2008, this Court issued an Order (Document 150) approving
 5 the parties stipulation for an extension and setting forth the following schedule:

- 6 • Summary Judgment Motion Hearing: August 29, 2008
- 7 • Pretrial Filings and Motions in Limine: September 19, 2008
- 8 • Opposition to Motions in Limine: September 26, 2008
- 9 • Pretrial Conference: October 7, 2008
- 10 • Trial Date: October 20, 2008

12 5. On August 20, 2008, the plaintiffs and the defendant filed a stipulation
 13 (Document 151) again notifying this Court that the parties needed more time to finalize the settlement.
 14 On August 21, 2008, this Court issued an Order (Document 152) approving the parties stipulation for
 15 an extension and setting forth the following schedule:

- 16 • Summary Judgment Motion Hearing: January 23, 2009
- 17 • Pretrial Filings and Motions in Limine: February 10, 2009
- 18 • Opposition to Motions in Limine: February 17, 2009
- 19 • Pretrial Conference: March 3, 2009
- 20 • Trial Date: March 23, 2009

21 6. The parties continue to diligently work toward finalizing the terms of plaintiffs'
 22 offer and the government's approval for the tentative settlement. The plaintiffs have been working
 23 closely with the Internal Revenue Service and the Department of Justice in responding to requests for
 24 additional documents related to the tentative settlement and computation of the amount of taxes owed.
 25 As noted in the Fourth Stipulation, the Internal Revenue Service is reviewing and analyzing the tax
 26 information provided by the plaintiffs for multiple tax years. This process has taken longer than
 27 anticipated because of the number of tax years and the volume of documents involved. The parties are
 28

1 working cooperatively and in good faith to quickly complete this review.

2 7. Also as noted in the Fourth Stipulation, the United States of America is
 3 diligently working to obtain approvals from the various officials who must approve the settlement. As
 4 this Court is aware, any settlement must be reviewed by several officials within the Department of
 5 Justice, culminating with final review and approval by the Associate Attorney General of the United
 6 States. To date, the settlement has been reviewed and recommended by the Western Region of the
 7 Civil Trial Section of the Tax Division, and reviewed by the Tax Division's Office of Review and
 8 forwarded to the Tax Division's Acting Assistant Attorney General for this matter. If he approves the
 9 settlement, it would then be forwarded to the Associate Attorney General for his consideration.

10 8. The parties appreciate the Court's patience as the parties work to finalize the
 11 settlement and request an extension of an additional three months.

12 **TERMS**

13 Based on these facts, the plaintiffs and the defendant agree to the following schedule:

- 14 • Summary Judgment Hearing – April 23, 2009
- 15 • Pretrial Filings and Motions in Limine – May 11, 2009
- 16 • Opposition to Motion in Limine – May 18, 2009
- 17 • Pretrial Conference – June 3, 2009
- 18 • Trial – June 25, 2009

1 December 19, 2008

Cox, Castle & Nicholson LLP

2 By: /s/ Robert D. Infelise

3 Robert D. Infelise

4 Attorneys for the plaintiffs,

5 DR Management, LLC; DR Acquisitions I, LLC;

DR Holdings, LLC; Jennifer Lin; Frederick Lin;

and Kevin Lin

6 December 19, 2008

United States Attorney

7 Joseph P. Russoniello, Esq.

Robert J. Higgins, Esq.

Bart D. Jeffress, Esq.

9 By: /s/ Robert J. Higgins

10 Robert J. Higgins

11 Attorneys for the defendant

12 United States of America

13 ORDER

14 Pursuant to the stipulation of counsel, it is so ordered, with the exception that the
15 Summary Judgment Hearing is continued to April 24, 2009, the Pretrial Conference is continued to June
16 2, 2009, and the Trial is continued to June 22, 2009.

17 Date: December 22 __, 2008



18 The Honorable Maxine M. Chesney